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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/815,049	03/30/2004	Samuel David Piper	EVI2034.04A1	7795
8156	7590	11/24/2006	EXAMINER	
JOHN P. O'BANION O'BANION & RITCHEY LLP 400 CAPITOL MALL SUITE 1550 SACRAMENTO, CA 95814			HWU, DAVIS D	
			ART UNIT	PAPER NUMBER
			3752	

DATE MAILED: 11/24/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

Application No.

10/815,049

Applicant(s)

PIPER, SAMUEL DAVID

Examiner

Davis D. Hwu

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– The MAILING DATE of this communication appears on the cover sheet with the correspondence address –  
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 30 March 2004.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-4, 11-13, 20-22, 25-27, 35, 36, 39-41, 49, 51-54, 62 and 65-67 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-4, 11-13, 20-22, 25-27, 35, 36, 39-41, 49, 51-54, 62 and 65-67 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)  | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)   | 5) <input type="checkbox"/> Notice of Informal Patent Application                       |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)<br>Paper No(s)/Mail Date <u>3/30/04</u> . | 6) <input type="checkbox"/> Other: _____  |

**DETAILED ACTION**

***Claim Rejections - 35 USC § 112***

1. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

2. Claim 51 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claim 51 depends on cancelled claim 50.

***Claim Rejections - 35 USC § 102***

3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

4. Claims 1-3, 11, and 12 are rejected under 35 U.S.C. 102(b) as being anticipated by Fissenko.

Fissenko shows an apparatus for producing shock wave aerosolization comprising a source of compressed gas, a nozzle, means associated with the nozzle for generating a supersonic jet of gas from the source of compressed gas, a sonic shock chamber 10, a user actuated valve 13 and means for releasing the compressed gas in bursts by the valve as recited in claim 3.

5. Claims 1, 4, 11, and 13 are rejected under 35 U.S.C. 102(b) as being anticipated by Corbiel.

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Corbiel shows an apparatus for producing shock wave aerosolization comprising a source of compressed gas, a nozzle, means associated with the nozzle for generating a supersonic jet of gas from the source of compressed gas, a sonic shock chamber 28, and means for delivering a burst of compressed gas to the nozzle and forming the supersonic jet prior to liquid being entrained and mixed with the jet (column 5, lines 1-14).

6. Claims 20-22 are rejected under 35 U.S.C. 102(b) as being anticipated by Cooper.

Cooper shows an inhaler comprising a reservoir containing compressed gas, a supersonic shock nozzle 229, and a user activated valve 276 as recited, a jet orifice, and a sonic shock chamber 227 as recited in claim 21.

***Claim Rejections - 35 USC § 103***

7. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

8. Claims 20-22, 25-27 are rejected under 35 U.S.C. 103(a) as being unpatentable over Corbiel in view of Fissenko.

Corbiel discloses an apparatus comprising a reservoir 22 for compressed gas and a supersonic shock nozzle 14. Corbiel does not disclose a user actuated valve. Fissenko teaches a dispensing apparatus comprising a source of compressed fluid controlled by a user actuated valve 13 and a supersonic shock nozzle 2 in which the valve releases

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the fluid in bursts for delivery to the nozzle 2, wherein the nozzle comprises a jet orifice and a sonic chamber 9 as recited in claim 21. It would have been obvious to one having ordinary skill in the art at the time the invention was made to have modified the device of Corbiel by incorporating a user actuated valve to release fluid in bursts as taught by Fissenko. The device can be used as an inhaler since it has been held that a recitation with respect to the manner in which a claimed apparatus is intended to be employed does not differentiate the claimed apparatus from a prior art apparatus satisfying the claimed structural limitations.

9. Claims 35, 36, 39-41, 49, 51-54, 62, and 65-67 are rejected under 35 U.S.C. 103(a) as being unpatentable over Corbiel in view of Fissenko.

Corbiel discloses an apparatus comprising a reservoir 22 for compressed gas and a jet orifice 16 to produce a supersonic jet from the compressed gas, and a sonic shock chamber 28 as recited. Corbiel does not disclose a user actuated valve. Fissenko teaches a dispensing apparatus comprising a source of compressed fluid controlled by a user actuated valve 13 and a supersonic shock nozzle 2 in which the valve releases the fluid in bursts for delivery to the nozzle 2, wherein the nozzle comprises a jet orifice and a sonic chamber 9 as recited in claim 21. It would have been obvious to one having ordinary skill in the art at the time the invention was made to have modified the device of Corbiel by incorporating a user actuated valve to release fluid in bursts as taught by Fissenko. The device can be used as an inhaler since it has been held that a recitation with respect to the manner in which a claimed apparatus is intended to be employed does not differentiate the claimed apparatus from a prior art apparatus

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satisfying the claimed structural limitations. The addition of an actuator handle coupled to the valve as recited in claim 62 would have been an obvious matter of design choice so that a user can control the release of the compressed gas.

### ***Conclusion***

10. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Davis D. Hwu whose telephone number is 571-272-4904. The examiner can normally be reached on 8:00-4:30. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Kevin Shaver can be reached on 571-272-4720. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300. Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.



**DAVIS HWU  
PRIMARY EXAMINER**